

**Reply under 37 CFR 1.116
Expedited Procedure
Technology Center 3700**

REMARKS

Reconsideration of the present application is respectfully requested.

This Response does not amend the claims in anyway, nor does it add any material that requires examination.

In accordance with MPEP § 706.07(f)(C)(1), Applicant offers the arguments that follow which overcome the rejections of the Final Office Action.

The rejections under 35 U.S.C. § 102.

Claims 84 and 86 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,431,754 to Savicki.

Applicant respectfully disagrees with this rejection. Savicki is not a reference under § 102(b).

Guidance for determining whether or not to apply § 102(b) is provided in MPEP § 7.06.02(a). II. A., where it states that “[i]f the publication date or issue date of the reference is more than one year prior to the effective filing date of the application (MPEP § 7.06.02), the reference qualifies for prior art under 35 U.S.C. § 102(b).”

This Savicki reference did not publish or issue more than one year prior to the effective date of the present application. Guidance for determining the effective filing date is provided in MPEP § 7.06.02. V. (A) and/or (B) and/or (D). Using the criteria of subparagraphs (A) and/or (B) and/or (D), the effective filing date of the application can be any of the following:

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November 7, 1997, the filing date for U.S. Patent No. 5,956,924
August 12, 1999, the filing date for U.S. Provisional Patent
Application Serial No. 60/1478,495
January 28, 2000, the filing date for U.S. Patent No. 6,216,423

In contrast, the filing date of Savicki is July 14, 2000. Therefore, even using the latest possible effective filing date for this application (which is a continuation of U.S. Patent No. 6,216,423), the filing date of Savicki is at least about six months later. Therefore, Savicki does not qualify for prior art under § 102(b).

It is well accepted that in order to establish a *prima facie* case of anticipation, there must be a single prior art reference which contains all of the limitations of the rejected claims. Since Savicki does not qualify as a prior art reference, a *prima facie* case of novelty of anticipation has not been established, and Applicant respectfully requests withdrawal of the rejection of claims 84 and 86.

The rejection under 35 U.S.C. § 103.

Claim 85 was rejected under 35 U.S.C. § 103 as being unpatentable over Savicki in view of U.S. Patent No. 5,020,194 to Herrington.

As discussed above, Savicki is not a prior art reference.

It is well accepted that in order to establish a *prima facie* case of obviousness, the combined or modified references must contain all elements of the rejected claim. The rejections in the Office Action depended on Savicki for a variety of reasons, as discussed in the second paragraph of page 3 of the Office Action. Since Savicki is not prior art to the present

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application, a *prima facie* case of obviousness has not been established. Applicant respectfully requests withdrawal of the rejection of claim 85.

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CLOSING

Applicant respectfully requests allowance of pending claims 84-86

It should be understood that the above remarks are not intended to provide an exhaustive basis for patentability or concede any basis for rejections or objections in the Office Action. For those rejections based upon a combination of references, there is no admission that the cited combinations are legally permitted, properly motivated, or operable. Further, with regards to the various statements made in the Office Action concerning any prior art, the teachings of any prior art are to be interpreted under the law. Applicants make no admissions as to any prior art. The remarks herein are provided simply to overcome the rejections and objections made in the Office Action in an expedient fashion.

The undersigned welcomes a telephonic interview with the Examiner if the Examiner believes that such an interview would facilitate resolution of any outstanding issues.

Respectfully submitted

By: 

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